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The 2004 Presidential Elections in Afghanistan

Institutions are stable, valued, recurring patterns of behaviour.

– Samuel Huntington

1. INTRODUCTION: THE POLITICAL PURPOSES OF THE 2004 ELECTION

The Afghan presidential election in 2004 generated considerable popular enthusiasm despite the fact that its results were largely considered to be pre-determined in favour of interim President Karzai. Participation was about 70 per cent (of which 40 per cent were women) with Karzai receiving 55.4 per cent of votes despite having more than 17 other candidates on the ballot.¹ The next highest vote-getter was Yunus Qanuni, with 16.3 per cent.

The primary political importance of this election was not the selection of the president. Rather it served as a de facto popular referendum on the Bonn Agreement² and as a sign that this political process would continue with the endorsement of

the population. The elections also should have begun to yield a solid foundation upon which to build the institutions required for democracy,³ which was the end point of the Bonn process. The poll succeeded as far as the primary purpose was concerned – the millions of voters who risked violence to vote, thus expressing support for a new beginning across a broad range of communities. It was, however, far less successful in establishing a strong base for Afghanistan's ongoing democratisation.

In line with the purpose of this collection, this paper will briefly highlight the areas where the international community can learn from the past and avoid repeating its mistakes in the future. The focus will be on the political function of the election within the transitional process – the point where the election ultimately failed. The technical details of the 2004 Afghan presidential election have been covered well enough in other papers⁴

¹ Two of these candidates backed out of the contest in the weeks before the vote, asking their supporters to vote for Karzai. Their names nonetheless remained on the ballot.

² The 'Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions', Bonn, Germany, 5 December 2001.

³ As in the opening quote by Samuel Huntington, *Political Order in Changing Societies* (New Haven and London, Yale University Press 1968) 12.

⁴ Including in this collection, where other essays are devoted specific processes such as the voter register and out-of-country voting; additional documentation is available from, eg, International Crisis Group, 'Afghanistan: From Presidential to Parliamentary

and were, for the most part, handled well. Where logistics failed were mostly where operations were put at risk by political decisions that ignored their complexity.

2. A NOTE ON LOGISTICS

While this paper does not provide details on the logistical aspects of the election, two broad points on the topic are worth noting. First, every election held in Afghanistan – in 2004, 2005, 2009 and 2010 – has been a logistical triumph against high odds. And in each of these elections a political crisis has overshadowed the operational successes, a fact that has often been overlooked. The success in 2004 was particularly notable, because at that point it was not clear that elections could actually be held under such conditions. The Afghanistan Research and Evaluation Unit called it a ‘near-impossible task’.⁵

Second, in any election, logistics and politics are ultimately inseparable. Political credibility depends in large part on logistical capability. Too often, however, policy-makers and donors minimise the complexities of logistics and push for policies that hinder the logistical operation and therefore put the credibility of the election at risk. In 2004, for example, the late political decision to hold out-of-country elections greatly complicated the in-country process.⁶ The insistence – for political reasons – to adhere for as long as possible to a manifestly impossible June date for elections undermined planning. Similarly, the decision – discussed below – to only begin drafting the electoral law after the constitution had been approved significantly reduced the time available to draft the electoral law and organise the logistics of the election.

3. THE TIMING OF THE CONSTITUTION AND ELECTION

The presidential election – Afghanistan’s first full-suffrage election for a head-of-state – was alien to Afghan history but integral to the future promised by the Bonn Agreement. It was therefore essential

Elections’, *Asia Report No.88*, Kabul/Brussels, 23 November 2004; and Andrew Reynolds and Andrew Wilder, ‘Free, Fair or Flawed: Challenges for Legitimate Elections in Afghanistan’, Kabul, Afghanistan Research and Evaluation Unit, September 2004.

⁵ Reynolds and Wilder, ‘Free, Fair or Flawed’, 1 (see FN4).

⁶ Among other things, it contributed to the malfunction of the indelible ink. The last-minute arrangements to provide ink to polling centres in Pakistan and Iran resulted in different applicators and created confusion.

for the election to be part of a process in which the underlying purpose was to replace the politics of violence with politics rooted in law. Unfortunately, the basis of that law – the constitution – played a major role in undermining the ongoing democratisation of Afghanistan’s politics.

There is a well-established academic debate on the sequencing of elections and constitutional processes in post-conflict situations. The Bonn Agreement had established that the constitution would be drafted prior to the elections. This did not require, however, that the drafting of the electoral law follow the adoption of the constitution. In fact, a debate took place within the international community early in the process about whether to hold the 2004 election according to a ‘one-off’ electoral law drafted prior to the constitutional process or to wait for the constitution to be ratified and then draft the electoral law.

Proponents of a one-off law tended to be the election specialists who considered the Bonn timelines – with elections taking place six months after the constitution was ratified – highly unrealistic. They advocated that the electoral law be drafted first, according to a consultation process among the main political actors, with the understanding that the law would apply only to the first elections and that subsequent elections would be held under a new law drafted according to the constitution.

This proposal was rejected. Drafting of the electoral law did not begin until the constitution was adopted and naturally had to follow the provisions of the constitution. Unfortunately, the latter set timelines and terms that continue to affect Afghan elections.⁷ In particular, the 2004 constitution created democratically-elected district councils but put the elections of these local bodies on a different cycle (every three years) from that of provincial councils (every four years) and of the Lower House of the legislature, the Wolesi Jirga, (every five years). This not only meant that there would be 13 elections scheduled in a 20-year cycle, but the implementation of the constitution also meant that the composition of the Upper House,

⁷ The government established by the 2004 constitution was similar to that of the 1964 constitution: a bicameral legislature, with the Lower House elected and the Upper House made up of partly-elected and partly selected members. In 1964, the Upper House was also made up of equal thirds: one-third selected by the king, one-third elected by provincial constituencies, and the remaining third comprised of the chairmen of the provincial councils.

the Meshrano Jirga, would effectively never be stable. A general rule of thumb in designing electoral systems in post-conflict situations, especially in countries with a scant electoral tradition, is to privilege simplicity over complexity. Constitutional designers, however, tend to be tempted by the lure of ‘political engineering’ – the designing of intricate systems to deliver desired political outcomes such as ethnic coalitions, the development of national political parties and the undermining of powerful individuals. While it is certainly true that some governing and electoral systems tend to produce these outcomes while others impede them, there is always the risk that such systems become too complex and generate unexpected consequences. Local political actors do not always interpret incentives in the way intended by well-meaning election engineers, while the complexity of the engineering complicates the implementation of elections.

4. THE ELECTORAL INSTITUTIONS

The elections were planned and implemented by a Joint Electoral Management Body (JEMB) made up of six Afghan members appointed by the president and five international experts selected by the UN Special Representative of the Secretary General (SRSG). This hybrid body was created to address, on the one hand, the lack of Afghan capacity in running elections and, on the other, the need for the elections to have Afghan ownership. Under the initial conception, the JEMB would oversee a technical secretariat whose managers were all internationals. Following the successful conclusion of the Constitutional Loya Jirga (CLJ), a decision was made to use the CLJ staff during the elections, pairing them with international managers, so that they could gain experience. The concept was not always easy to implement, given that the roles and responsibilities of the Afghans and internationals were never entirely clarified. The United Nations was worried that in the end it would be held responsible for a process over which it had no final authority. This did not turn into as big an issue as it might have in 2004, but it resurfaced with a vengeance in 2009.

On election day, 8.1 million votes were cast in Afghanistan, of which 40 percent were by women. The estimated turnout was 70 per cent of registered voters. In addition, approximately 260,000 Afghan refugees in Iran and 590,000 Afghan refugees in Pakistan also voted. The unfortunate problem with the indelible ink gave the opposition a perfect pretext to do what they

had previously announced they would do anyway – boycott the election. The list of grievances they presented, some of which were legitimate, resulted in the creation of an independent panel of international experts to examine complaints. The decisions of this panel did not fundamentally change the outcome, though it arguably undermined the JEMB, which at that time had the authority to adjudicate complaints. This international panel was the embryo of what was later codified in Afghan law as the Electoral Complaints Commission (ECC). In subsequent years, the half-international JEMB would become the all-Afghan Independent Electoral Commission (IEC), and the all-international panel would become the all-Afghan ECC.⁸ In this way, the institutional roots set in 2003 evolved into what they now are.

5. THE POLITICAL ENVIRONMENT

Many, looking back, assert that there was a moment in early 2002 when the so-called ‘warlords’ might have been abruptly excluded from power and a new generation could have begun to build a new state. Correctly or incorrectly, UN SRSG Lakhdar Brahimi and US Ambassador Zalmay Khalilzad did not see the situation in that way. Their policy was, in general, to accommodate the warlords, while at the same time seeking to diminish their de facto power. As Khalilzad wrote recently: ‘The United States favoured a phased transition that accommodated powerful political figures while helping Afghans to build a political system that would require these forces to play by a new set of rules.’⁹ Often, in practice, this meant giving them positions in the administration in Kabul while seeking to distance them from their bases of power. This was an understandable position in the short term, because these figures had the power to restart fighting if they were not accommodated. Less well managed, however, was the articulation of a moment of real transition, when accommodation began to end and enforcement of the rules began to apply.

Rather than being a signal event in a process leading to the legitimacy of the government, the 2004 presidential election was merely an event. Politically, it consolidated the formal authority of President Karzai that had been gained by political

⁸ The February 2010 electoral decree removed the legal requirement that three-fifths of the ECC be internationals.

⁹ Zalmay Khalilzad, ‘Lessons from Afghanistan and Iraq’, *Journal of Democracy* (July 2010) 21:3.

consensus at Bonn and at the Emergency Loya Jirga in 2002. Whatever the flaws of the 2004 election, Karzai's victory with more than 50 per cent was probably a fair reflection of the popular will.

What the elections failed to do was advance the institutionalisation of politics. In the most basic terms, such a process means forcing political actors to play according to the rules – as Khalilzad correctly noted – such that the use of violence to resolve political conflicts is reduced. This is no doubt a tall order, requiring years if not generations. It might have been advanced further than it was, however, if the international community had used its moment of strength and its credibility with President Karzai in the early years after the Bonn Agreement to apply greater pressure on political actors who were manifestly breaking the new rules. The successful efforts to remove Ismail Khan from Herat and General Dostum from Mazar were two examples where this sort of pressure seemed to work. It was not consistently applied, however, and not followed up. The process of institutionalisation is more than anything a question of setting and enforcing incentives, both positive and negative. After 2004, the ad hoc incentive structure that emerged, largely with the complicity of the international community, and which confronted Afghan political actors, was antithetical to institution building.

6. CONCLUSION

As an event the election was a success. As the International Crisis Group noted, 'Despite widespread misgivings, the presidential elections succeeded beyond most observers' expectations.¹⁰ To the extent that it was a proxy for a referendum on the Bonn Agreement, the enthusiasm and high turnout indicated that Afghans supported the nascent transition.

As a vehicle of advancing that transition, however, the elections were less successful. Since the election was treated more as an event, a 'punctuation point in a peacekeeping mission',¹¹

insufficient attention was paid by Afghans and the international community to building and sustaining key electoral institutions. Despite their high cost, the political value of elections was short-term: elections happened, but democratisation did not follow. It is unfortunate that one of the main factors now driving the insurgency is the disconnect between Afghans and their government – precisely the problem that the democratisation process was designed to address.

Finally, it is sobering to watch, in the shadow of the 2010 parliamentary elections, the debate over elections in Afghanistan begin its sad traverse towards the conclusion that in Afghanistan elections undermine democracy.¹² Instead of promoting democracy, elections increasingly serve only one purpose – to maintain the constitution. Whatever the flaws of that document, and however weakly it is enforced, it holds Afghanistan's political class together. Not to hold elections would be to effectively break the political arrangement that prevents the country from sliding into total civil war. And so elections are held, despite the greatly deteriorated security situation, increased corruption and the manifest weaknesses of the Afghan institutions responsible for organising and securing them. Elections have essentially become a means of securing and freezing in place a fragile political settlement, rather than an instrument to expand political representation.¹³ In this inversion of the role of elections, once can sense the great disappointment of Bonn.

¹⁰ International Crisis Group, 'Afghanistan' (see FN4).

¹¹ See Ben Reilly, 'Elections in Post-Conflict Societies' in *The UN Role In Promoting Democracy: Between Ideals and Reality*, eds Edward Newman and Roland Rich, Tokyo, United Nations University Press, 2004, 118.

¹² See, for example, 'Not Exactly a Ringing Endorsement: Another Year, Another Rigged Vote' *The Economist* 396 (23 September 2010), which describes the 2010 parliamentary elections as 'a vote to set democracy back' and quotes Dr Abdullah, the 2009 runner-up, as saying that 'Democracy is already damaged.' See also Dan Murphy, 'Are Afghanistan Elections Hurting Democracy?' *Christian Science Monitor*, Global News Blog (21 September 2010) available at www.csmonitor.com/world, and Aryn Baker, 'Afghan Elections: Corruption Could Again Thwart Democracy', *Time* (21 September 2010).

¹³ Though, as Noah Coburn and Anna Larson have documented, at the local level elections do serve to reconfigure patterns of representation. See 'Voting Together: Why Afghanistan's 2009 Elections Were (and Were Not) a Disaster', Kabul, Afghanistan Reconstruction and Evaluation Unit, 2009.

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ABOUT THIS CHAPTER

This chapter is part of a larger volume called *Snapshots of an Intervention: The Unlearned Lessons of Afghanistan's Decade of Assistance (2001–2011)*, edited by Martine van Bijlert and Sari Kouvo. The volume is a collection of 26 short case studies by analysts and practitioners, each with long histories in the country, who were closely involved in the programmes they describe. The contributions present rare and detailed insights into the complexity of the intervention and, in many cases, the widely shared failure to learn necessary lessons and to adapt to realities as they were encountered.

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